IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1270 OF 2005
IN
SUIT NO.457 OF 2005

Balkisan D. Sanghvi .
43, Padmanabh, N.S. Road No.8, .
JVPD Scheme, Vile Parle (West) .
Mumbai-400 049. ....Plaintiff

V/s.

1. Kiron D. Sanghvi .
Plot B-8, V.L. Mehta Road, .
Mumbai-400 049. .

2. Ashok D. Sanghvi .
Plot No.11, Chitrakoot, .
8th Road, Juhu Scheme, .
Mumbai-400 049. .

3. Minaxi Kishore Mehta .
B-21, Paritosh, 3rd Floor, .
V.L. Mehta Road, .
Vile Parle West, .
Above Standard Chartered Bank, .
Mumbai-400 49. .

And also (Wilson House), 1st Floor, .
Nagardas Road, Andheri East, .
Mumbai-400 049. .

4. Kishore Mehta, .
B-21, Paritosh, 3rd Floor, .
V.L. Mehta Road, .
Vile Parle West, .
Above Standard Chartered Bank, .
Mumbai-400 49. .

And also (Wilson House), 1st Floor, .
Nagardas Road, Andheri East, .
Mumbai-400 049. .

5. Nimir Mehta, .
B-21, Paritosh, 3rd Floor, .
V.L.Mehta Road, .
Vile Parle West, .

Above Standard Chartered Bank,
Mumbai-400 49.

And also (Wilson House), 1st Floor,
Nagardas Road, Andheri East,
Mumbai-400 049.

6. Jayant D.Sanghvi,
Plot No.S-1, 13th Cross Road,
JVPD Scheme,
Mumbai-400 049. ....Defendants

AND

1. Prolific Consultancy Services
(Mumbai) Private Limited,
a Company incorporated under the
Companies Act, 1956, having its
registered office at 48/A,
Ghanshyam Industrial Estate,
Veera Desai Road,
Andheri (W), Mumbai-400 053.

2. Babulal Khandelwal,
1501-Sterling Tower,
Samarth Cross Road No.3,
Lokhandwala Complex,
Andheri (W), Mumbai-400 053.

3. Vimla B. Khandelwal,
1501-Sterling Tower,
Samarth Cross Road No.3,
Lokhandwala Complex,
Andheri (W), Mumbai-400 053.

4. Vijay B. Khandelwal,
1501-Sterling Tower,
Samarth Cross Road No.3,
Lokhandwala Complex,
Andheri (W), Mumbai-400 053.

5. Vikas B. Khandelwal,
1501-Sterling Tower,
Samarth Cross Road No.3,
Lokhandwala Complex,
Andheri (W), Mumbai-400 053.

6. Ashok B. Khandelwal,
1501-Sterling Tower,
Samarth Cross Road No.3,
Lokhandwala Complex,

Andheri (W), Mumbai-400 053. ....Respondents

Mr.N.J. Thakkar, Senior Counsel with Mr.Chetan Kapadia and Mr.S.S. Suryavanshi i/b M/s.M.K. Ambalal & Co. for the Plaintiff.

Mr.Darshan Mehta i/b Dhru Liladhar & Co. for Defendant No.1.

Mr.Sameer Sawant i/b Little & Co. for Defendant No.2.

Mr.Jai Chinai, Senior Counsel with Ms.Sonal i/b Zohair & Co. for Defendant Nos.3 to 5.

Ms.Sheetal Sampat i/b Vimadalal & Co. for Defendant No.6.

Mr.A.Y. Bookwala, Senior Counsel with Mr.Munir Merchant for Respondent No.1.

Mr.E.P. Bharucha, Senior Counsel i/b M.S. Venegaokar for Respondent Nos.2 to 6.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH FEBRUARY, 2006.

ORAL JUDGMENT :

1. This is the Plaintiff’s Chamber Summons for amendment of the suit.

2. The suit is for the administration of the estate of the Plaintiff’s parents. The Plaintiff’s father and mother expired on 18.3.2002 and 28.12.2004 respectively. Defendant Nos.1, 2 and 6 are the Plaintiff’s brothers. Defendant No.3 is the Plaintiff’s sister. Defendant No.4 is the husband of

Defendant No.3 and Defendant No.5 is the son of Defendant Nos.3 and 4.

3. By this Chamber Summons the Plaintiff seeks to add six Respondents to the Chamber Summons as Defendant Nos.7 to 12. The Plaintiff also seeks by the Chamber Summons to challenge the alienation in respect essentially of two properties, one to Respondent No.1 and the other to Respondent Nos.2 to 6. Respondent No.1, Prolific Consultancy Services (Mumbai) Private Limited is a closely held company in which Defendant Nos.3, 4 and 5 are the only shareholders. Respondent Nos.2 to 6 are members of the Khandelwal family who are not related to the parties to the suit.

4. It was suggested by the learned counsel appearing on behalf of the Defendants and the Respondents that the Plaintiff had admitted that the impugned documents/transactions had been executed/entered into during the life time of the deceased. That however, is an incorrect presumption The proposed amendments, read as a whole, clearly indicate that the Plaintiff does not admit the execution of the said documents. For instance in paragraph 8-B itself the Plaintiff has stated that the

agreements were "allegedly entered into" by the Defendants with the respective Respondents. While dealing with the transactions entered into by the deceased with the Respondents, the Plaintiff has consistently referred to the transactions as having been "purportedly" entered into. In fact as far as Respondent No.1 is concerned, the Plaintiff has expressly stated inter-alia that the Indenture of Lease dated 25.2.2002 smacks of fraud and that a perusal of the terms thereof reflects upon the illegal, unlawful and dishonest intention on the part of Defendant No.3. Further the Plaintiff has stated that when the power of attorney was allegedly executed by his father, he was bed-ridden and was neither physically nor mentally fit to sign any papers. He further alleges that the same was forged and fabricated. The fact that the transactions have also been impugned on other grounds does not militate against the fact that the very execution of the documents is also impugned.

5. There can be absolutely no hesitation in granting the amendment impleading Respondent No.1 and seeking reliefs in respect of the transaction allegedly entered into with Respondent No.1. This is for the simple reason that Respondent No.1 is not a

stranger to the family. It is a company limited by shares. The shares are held only by Defendant Nos.3, 4 and 5.

6. Mr.E.P. Bharucha, the learned Senior Counsel appearing on behalf of Respondent Nos.2 to 6 however, submitted that his clients are strangers to the family and ought not to be embarrassed by being impleaded in a trial where issues not concerning them will also be tried. Mr.Bharucha further submitted that in an administration suit reliefs cannot be sought to challenge transactions entered into by the deceased whose estate is sought to be administered. The submission is not well founded for more than one reason.

7. Mr.Bharucha relied upon a judgment in the case of - *Mt.Mohd. Zamani Begam and another v. Fazal.ul.Rahaman and another, AIR (30) 1943 Lahore 241* (DB) where after a review of various authorities the Division Bench held :-

> "After a review of all the authorities cited at the Bar, I am of the opinion that it was open to the Court to determine in an administration suit whether certain alienations were or were not in fact made by the deceased. It is however not open to the Court in an

> administration suit to determine the validity of any alienations made by him. In the present case two of the alienations were made in favour of the defendants by the deceased about a month before his death while the third alienation was made in favour of Mt.Zamani Begam, defendant 5, about ten years before the death of her husband and the donor was not the husband but the husband's father. For the reasons given above, I am of the opinion that it is not open to the Court to make an inquiry with respect to houses Nos.2 to 5 in the present administration suit."

8. The judgement is of no assistance to the Respondents. I have with respect differed from the view taken for reasons I shall give later. In any event in the facts of this case the judgement is in any event not only of no assistance to the Respondents but against them. For even in this case, it has been held that it is always open to the Court to determine in an administration suit whether certain alienations were or were not in fact made by the deceased. This very question arises in the present case as well. I have earlier observed that the Plaintiff has not admitted the execution of the documents pertaining to the transactions with Respondent Nos.2 to 6. This is clear from a reading of the pleading as a whole. The Plaintiff has prefaced the consideration of the documents with the words "purportedly entered into".

The Plaintiff has referred to the documents with the prefix "alleged". The Plaintiff has further stated : "The alleged Agreement is purported to have been executed by Deceased No.2 though the same is signed by Deceased No.2 in gujarati language and the said agreement is also without any witness to the said agreement." The averments relied upon by Mr.Bharucha in the last two sentences of paragraph 8F is the Plaintiff's case in the alternative assuming that the documents were executed. This is clear from the opening words : "In any event .....".

9. Mr.Bharucha also relied upon a judgment in the case of - *Ah Kyan Sin and another v. Yeo Ah Gwan and others, AIR 1937 Rangoon, 497.* I do not read the judgment as laying down as an absolute proposition that a stranger to the family can never be impleaded in an administration suit and that no reliefs can be granted against them in such a suit. The learned Judge in fact relied upon the observations in *Dhunraj v. Broughton, (1875) 15 Bengol Law Report, 296*. In that latter case, the reliefs were disallowed as the learned Judge inter-alia felt that there was no other circumstance which would make it equitable that the strangers should be sued jointly with the legal representatives. In the present case the

circumstances warrant the impleadment of Respondent Nos.2 to 6 and the grant of the amendment seeking to challenge the transaction allegedly entered into by them for more than one reasons.

10. The allegations and contentions by the Plaintiff against the Defendants and Respondent No.1 and the issues which arise thereon and the evidence required therefore will to a large extent also be applicable to the issues between the Plaintiff and Respondent Nos.2 to 6. If the Plaintiff succeeds in establishing the case as pleaded including the amendments qua the transaction with Respondent No.1 which I propose allowing, the alleged alienation in favour of Respondent Nos.2 to 6 may well also be affected.

11. In the present case, I do not see any reason justifying driving the Plaintiff to file a separate suit against Respondent Nos.2 to 6. The conduct pleaded in respect of the Defendants and Respondent No.1 is in many respects relevant to the case qua the transactions pertaining to Respondent Nos.2 to 6 which have been impugned by the amendment. The transactions with Respondent Nos.2 to 6 pertain to an alleged development agreement dated 5.2.2003 purportedly

entered into between the deceased mother as the owner thereof, Defendant No.3 as a confirming party thereto and Respondent Nos.2 to 6 i.e. the proposed Defendant Nos.8 to 12. Reliance is also placed by the Defendants on a power of attorney purportedly executed by the deceased mother in favour of Respondent Nos.2 to 6. Firstly it is important to note that, as aforesaid, the Plaintiff has not admitted the execution of these documents. Moreover in respect of the transactions with Respondent No.1, various contentions have been urged regarding the manner and circumstances in which the deceased mother allegedly signed the documents including the power of attorney. Allegations and contentions have also been made in that regard regarding alleged collusion between Defendant Nos.3 to 5 and the advantage allegedly taken by them by reason of their proximity to the deceased parents. Similar allegations have been made and contentions raised in respect of the alleged transaction with Respondent Nos.2 to 6 and the documents allegedly executed in regard thereto viz. the alleged gift deed in favour of Defendant No.3, the development agreement and a power of attorney. In fact the allegations regarding the collusion between Defendant Nos.3 to 5 and the advantage allegedly taken by them of the old and infirm age and mind of their

mother have been made in respect of the transactions with Respondent Nos.2 to 6 as well.

12. In fact the present Chamber Summons, if granted, will avoid multiplicity of proceedings.

13. This leaves for my consideration Mr.Bharucha's submission that in an administration suit the moment mere execution of a document by the deceased is admitted the validity thereof or the transactions represented thereby cannot be challenged especially when strangers to the estate are parties to such documents or transactions. Mr.Bharucha relied upon the above judgements in this regard.

14. In *Mt.Mohd. Zamani Begam's* case (supra) the Lahore High Court distinguished a judgement of the Privy Council and the judgements inter-alia of this Court while coming to the conclusion I have extracted above. With great respect I am unable to distinguish these judgments in the same manner and am unable to agree with such a wide proposition both in principle and on precedent.

15. In *Benode Behari Bose & Ors. v. Srimati Nistarini Dassi & Ors. Vol.XXXII Indian Appeals, 193*,

the Respondent had sought the administration of the estate of her husband. The Respondent's husband had left behind a Will under which she was one of the beneficiaries. After his death the Respondent was induced to execute certain instruments by which she surrendered her right under the Will. In the administration suit filed by her, the Respondent alleged that these documents executed by her after the death of her husband had been obtained by fraud. She therefore, sought a declaration that the same were void. In the suit, she also sought an order setting aside a partition of the estate and the scheme of administration settled by an award. The award cancelled the deed of trust executed by the executors of the Will and effected a partition of the estate and the same was acted upon for several years and in pursuance of its directions certain leases in the suit were executed. In the suit a declaration was sought that the deed of trust, the award, the decree made thereon and the leases were fraudulent and void as against the Plaintiff and not binding on her and that so far as they purported to affect the residuary estate to which she was entitled to the same be set-aside and cancelled. The Plaintiff also sought the usual orders for account and administration of the estate. One of the questions that arose was whether

the Calcutta High Court had the right to order administration of the estate in respect of the properties outside its jurisdiction. Holding that it did the Privy Council also held as under :-

> "The primary object of the suit was the administration of the estate of a deceased person resident within the jurisdiction, the principal executor being also resident there and the actual administration going on there. The High Court of Calcutta, in its ordinary jurisdiction, had right to order administration of this estate, and, as ancillary to such an order, to set aside deeds obtained by the fraud of the executor. Nor does the circumstance that a decree had been granted by the Court of the 24 Pergunnahs making a fraudulent award an order of Court protect that decree from the jurisdiction of the Calcutta Court when redressing that fraud. In like manner, their Lordships consider the Calcutta Court entitled, for the due administration of the estate, to set aside leases of land outside the territorial limits of their jurisdiction, those leases having been made as an incident of the same fraud."

The Privy Council therefore, recognized the fact that in an administration suit, the Court has the power to decide ancillary questions relating to the administration such as to set-aside deeds obtained by fraud of the executor.

16. The Lahore High Court distinguished the judgement thus :-

> "In 33 Cal. 180, a ruling of their Lordships of the Privy Council, it was held by the Judicial Committee that the Court had power to order administration of the estate, and as auxiliary to such order to set aside deeds obtained by the fraud of the executor. Any fraudulent transfers made by the executor could of course be set aside in an administration suit as such alienations take place after the death of the deceased and the estate of the deceased has to be determined as it existed at the time of his death."

17. The Privy Council did not draw any distinction between the documents executed prior to or after the death of the deceased and those executed after the demise of the deceased. It is true that the documents impugned in this case pertain to those executed not by the deceased but by the executors of the Will. I do not however read the judgment as limiting the ancillary powers of the Court in an administration suit to the documents executed only by persons other than the deceased himself. There is nothing to suggest that the ancillary powers referred to by the Privy Council cannot be exercised in respect of the transactions purportedly entered into by the

deceased but alleged to have been executed in circumstances which would render them void.

18. In *Motibhai Shankarbhai Patel v. Nathabhai Narayanbhai Patel, AIR 1921 Bombay, 187 (DB)*, the Plaintiff had filed an administration suit against the Defendant allegeding that he had taken possession of the property of the deceased together with the documents, papers and account books relating thereto. A preliminary decree was passed directing an account to be taken of the estate of the deceased and an administrator was appointed to report as to the nature of the properties and the rights of the parties. The Defendant objected to the report of the administrator on the ground that the Court had no jurisdiction to deal with any properties in his possession which he contended did not belong to the estate of the deceased. The Division Bench held that the administrator no doubt could not have decided whether the assets belonged to the deceased or not as against the persons who are not parties to the suit. As the Defendants however were parties to the suit the Division Bench held as under :-

> "In this case the assets are in the possession of the defendant. There is no reason why the Court should not decide as between the parties to

> the suit whether those assets belonged to the estate of the deceased or not. If that is not done, the only result would be that another suit would have to be filed in which the contesting parties would be the same and the issues would be the same which have already been raised in this suit. It seems to me, therefore, that this is a case in which a preliminary decree has been passed but the carrying out of that preliminary decree has been obstructed by the defendant's contention, and that the Court has taken a wrong view in acceding to that contention."

19. Similarly in the case before me I find no reason why the Court in this suit should not decide whether the assets belonged to the estate of the deceased or not. To refuse the amendment would result in a rather protracted and involved series of applications for appointment of an administrator of the estate to file a suit or other proceedings against Respondent Nos.2 to 6 on behalf of the estate in respect of the suit properties. The contesting parties in such a suit would also be the same as the parties in this suit. As I have discussed earlier, the issues involved in and the evidence to be led in such a suit would be substantially the same as those involved in the present suit.

20. The Lahore High Court distinguished the

judgement on the ground that in that case there was no question of the validity or invalidity of a transaction. With great respect I am unable to ignore the judgement on this basis. The question of whether a property belonged to the deceased or not can depend on a variety of factors including whether or not the transactions purportedly entered into by the deceased were void or not. The ratio of the Division Bench of this Court did not restrict the decision on the question on any particular criteria.

21. In *Mahomedally Adamji Masalavalla v. Abdul Hussain Adamji Masalavalla, AIR 1924 Bombay 313 (DB)*, the administration suit was between brothers and sisters. As in the case before the Privy Council, one of the objections in this case was that one of the properties was outside the jurisdiction of the Court. The Lahore High Court sought to distinguish the judgement on the ground that in this case no question arose whether in an administration suit the validity of certain alienations alleged to have been made by the deceased can be challenged. The following extracts will demonstrate that the question was in fact decided. I am unable therefore to accept this distinction drawn by the Lahore High Court as a reason for refusing to follow the judgement of the Division

Bench in the case. The Division Bench followed the judgment of the Privy Council in *Benode Behari Bose's* case (supra) to the effect that the Court had a right to order administration of this estate, and, as ancillary to such an order to set aside deeds obtained by the fraud of the executor. The Division Bench held as follows:-

> "On a consideration of the arguments on both sides I am satisfied that the Court has jurisdiction to determine in this suit whether the property belonged to the deceased Adamji or not. It appears from the form of the decree in an administration suit given in Seton on Decrees, Vol.II, page 1412 (7th Edition) and also in the Sec.I, Appendix D, of the Code of Civil Procedure, that among the inquiries contemplated in the course of the administration the inquiry as to what immovable property the deceased was seized of or entitled to, at the time of his death is included. <u>The question to my mind is not now whether the suit in respect of this property so far it relates to this property is a suit for land or not, but whether such an inquiry is appropriate in an administration suit."</u> (emphasis supplied)

The Division Bench thereafter referred to the judgment of the Privy Council and in respect thereof held as under :-

> "The effect of these observations is sought to be got over by the

consideration, that in that case, in fact, leave was obtained under clause 12, and that the leave was obtainable because a part of the property was situate at Calcutta, and, secondly, it was really a question of fraud, and that could properly be dealt with as between the parties by the High Court at Calcutta. It is quite true that the judgment of the Court of Appeal at Calcutta in that case proceeded upon two grounds ; one of which was that leave in fact was obtained. That ground, however, has not been referred to by their Lordships of the Privy Council, and the jurisdiction of the Court is determined on the general ground that the question as to title to the property outside Calcutta was really an incident of the administration of the deceased's estate. It is hardly necessary to refer to the decision of this Court in Motibhai v. Nathbhai (3) where also it was held that the question as to title of the property can be appropriately considered in an administration suit. (emphasis supplied)

"It is quite true that this is not a case of fraud. But this is a case of privity between the parties to the suit where one of the heirs contends that the property was given over to him by way of gift by his deceased father and the other heirs contend that it continued to form part of the estate of the deceased. In such a case it is difficult to say that on the strength of the observations in Vaghoji v. Camaji it can be held that the question between the parties so situated relating to the question of title would be outside the jurisdiction of this Court even though the immovable property may be beyond the limits of the territorial jurisdiction of this Court."

22. The effect of these judgment is quite clear. It is that in an administration suit, the question between the parties relating to the title of the deceased in respect of properties can be gone into. There is no bar to a Court, in an administration suit, to determine the validity of transactions allegedly entered into by or on behalf of the deceased whose estate is sought to be administered. Ancillary to the same may involve adjudication of questions regarding the validity of alienations made by the deceased, including to third parties who may not be beneficiaries, executors, trustees or administrators of the estate.

23. Whether the Court ought to permit an amendment to challenge transactions entered into by the deceased on the ground that they are void for any reason must necessarily depend on the facts of each case. In fact in *Mahomedally Adamji Masalavalla's* case the Division Bench held :-

> "..... I may add that because the Court has the power to determine the question of title to immovable property situate outside its territorial jurisdiction in an administration

> suit, it does not necessarily follow that that Court itself will always determine the question. That must be decided with reference to the circumstances of each case. It may be more convenient in a given case to have it determined in a suit filed in the Court in whose jurisdiction the property is situated by the receiver in the administration suit or by any of the parties. In the present case property is situate at Kurla, and having regard to the circumstances of this case the determination of the question by this Court is at least as convenient as, if not more convenient than, having it determined by the Court at Thane."

24. The same caveat will apply generally as well. In a given case the Court may well decline to exercise its discretion to permit a challenge to transactions in the administration suit leaving the parties to adopt other remedies in accordance with law. In a case where the challenge to the title or right of a third party is based on allegations also against the persons such as heirs, executors, beneficiaries and trustees who are responsible for or parties to such transactions and who are also parties to the administration suit, the Court would more readily permit the challenge to such transactions in the administration suit itself. In such cases, a finding as to the conduct of such person and the consequences thereof would be necessary before final accounts are

made and the shares of the parties are determined in the administration suit. In the facts of this case and in particular for the reasons already stated, I am of the opinion that it is desirable that the disputes regarding the alleged transactions between the deceased and Respondent Nos.2 to 6 should be decided in this suit.

25. It is clarified that I have not considered the merits of the matter on facts.

26. In the circumstances, the Chamber Summons is made absolute in terms of prayers (a) and (b). The amendments shall be carried out on or before 12.6.2006.

27. The operation of this order is stayed till 5.5.2006.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1270 OF 2005
IN
SUIT NO.457 OF 2005

DATE OF DECISION : 13TH FEBRUARY, 2006

For Approval and Signature :

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)

2. To be referred to the Reporter or not ?)